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United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN P. McLAUGHLIN, as United States Collector
of Internal Revenue, First District of California,
Appellant,

vs.

COOS BAY LUMBER COMPANY, a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED

MAY 25 1935

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS.

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In the Southern Division of the District Court of the
United States, in and for the Northern District of
California.

At Law.
No. 19268K.

COOS BAY LUMBER COMPANY, a corporation,
Plaintiff,

vs.

JOHN P. McLAUGHLIN, as United States Collector
of Internal Revenue, First District of California,
Defendant.

COMPLAINT FOR RECOVERY OF TAXES
ERRONEOUSLY PAID.

Now comes the plaintiff above named and files this
its Complaint against the defendant above named and
for cause of action alleges:

I.

That the plaintiff above named now is, and at all
times herein mentioned was, a corporation organized

and existing under and by virtue of the laws of the State of Delaware and having its executive offices and its principal place of business in the State of California in the City and County of San Francisco. That the plaintiff was formerly named the Pacific States Lumber Company, which name was duly changed to the Coos Bay Lumber Company on or about February 15th, 1928.

II.

That at all times herein mentioned, and at the time of the purchase of the stamps and the payment of the tax hereinafter described, defendant John P. McLaughlin was the duly appointed, acting and qualified United States Collector of Internal Revenue for the First District of California, having his official place of business in the City and County of San Francisco, State and Northern District of California. [1*]

III.

That on or about the 18th day of September, 1925, the plaintiff had duly issued and outstanding its first mortgage bonds in the principal amount of upwards of \$7,000,000; that the plaintiff was in default in the payment of principal and interest on said bonds on said September 18th, 1925.

IV.

That there was organized during the month of September, 1925, the bondholders' protective committee for holders of said bonds of the plaintiff, and that under an agreement dated September 18th, 1925, between said bondholders' protective committee and bondholders of the Pacific States Lumber Company, a copy of which

*Page numbering appearing at the foot of page of original certified Transcript of Record.

agreement is attached hereto, marked Exhibit "A" and hereby made a part hereof, bonds of the plaintiff were deposited with said committee for the purposes set forth in said Exhibit "A".

V.

That said bondholders' committee, acting pursuant to the authority conferred upon it in said deposit agreement, on the 19th day of April, 1927, outlined a plan of reorganization of the plaintiff, whereby bonds acquired by the committee should be exchanged for first preferred stock of the plaintiff of the principal par value to the principal par value of the bonds held by the committee, together with one share of no par common stock of the plaintiff for each \$100 principal par value of the bonds surrendered; that the plan provided not that the bondholders' committee should receive the issue of stock from the plaintiff, but that the stock should be issued directly and held only by voting trustees named by the bondholders' protective committee, pursuant to said plan. That the pertinent portions of said plan are as follows:

"Pacific States Lumber Company
Plan and Agreement of Reorganization
Adopted by the Bondholders Protective Committee
April 19, 1927.

1. RECAPITALIZATION. All the present stock of Pacific States Lumber Company shall be cancelled, and the Company recapitalized upon the following basis: [2]

\$6,827,700 First Preferred Stock, entitled to dividends at 7%, cumulative from July 1, 1925, redeemable at 105 and accumulated dividends.

\$1,000,000 Second Preferred Stock, entitled to dividends at 6% from and after January 1, 1932, redeemable at par and accumulated dividends, if any.

68,277 shares of No Par Value Common Stock.

Common Stock only shall have voting power, but no dividends shall be paid on Common Stock until January 1, 1933, nor thereafter until all accumulated dividends on Preferred Stocks have been paid, and suitable sinking fund provision made for the retirement of Preferred Stocks in the order of their preference as the property is depleted by the liquidation of assets.

2. STOCK DISTRIBUTION. For each \$100 principal of the present \$6,827,700 of bonds outstanding, there shall be issued in exchange \$100 par value of First Preferred Stock and one share of Common Stock. Any of the authorized First Preferred and Common Stock not so exchanged shall be cancelled.

All of the Second Preferred Stock shall be issued to a Trustee for the former stockholders of all classes to be divided in such proportion as they shall determine.

3. VOTING TRUST. The First Preferred and Common Stock shall be held and voted by a committee of five Voting Trustees, for the benefit of the owners thereof, with discretionary power to sell all of the Common and/or First Preferred Stock as a unit, but upon terms which will retire or purchase all of the First Preferred Stock at not less than par and accumulated dividends, unless and except otherwise authorized or instructed in writ-

ing by not less than 75% in interest of the First Preferred Stockholders. Also all the assets of the Company may be sold or mortgaged upon majority vote of the Common Stock.”

VI.

That the plaintiff in the month of September, 1927, agreed to carry out this plan; that before its consummation, the number of bonds outstanding was reduced to the principal par value of \$6,375,700;

That on January 27th, 1928, the bondholders’ committee adopted the following resolution:

“RESOLVED FURTHER: That the Company be, and hereby is, requested to complete its corporate reorganization in accordance with the said Plan, and to issue 63,757 shares of first preferred and a corresponding number of no par value common stock to the Trustees to be named pursuant to Section 3 of said Plan.” [3]

That the said resolution was placed upon the minutes of the meeting of the Directors of the plaintiff company held in San Francisco on the 27th day of January, 1928, and the following resolution was passed by the Directors:

“RESOLVED that the minutes of the Bondholders’ Protective Committee, as read by Mr. Arnold, be spread on the minutes of the Company and that the Officers of the Company be empowered and instructed to carry out all of acts provided therein, to be performed by the Company.”

VII.

That thereafter, the plaintiff proceeded to, and did, amend its Certificate of Incorporation to authorize the issue of the stock in accordance with the plan of reorganization.

VIII.

That on or about the 25th day of February, 1928, plaintiff did issue 63,757 shares of first preferred stock and 63,757 shares of no par common stock to G. S. Arnold, C. T. MacNeille, N. V. Wagner, A. McC. Washburn and Homer W. Bunker, being the persons theretofore named by the bondholders' protective committee as the trustees to whom said stock should be issued, in accordance with the said plan of reorganization, said persons being the same persons who then comprised said bondholders' protective committee; that said shares were issued, as aforesaid, in two certificates, one certificate for 63,757 shares of first preferred stock, and one certificate for 63,757 shares of no par common stock;

That at the same time, the plaintiff did issue to one F. A. Warner, as trustee for the former stockholders of the plaintiff, 10,000 shares of second preferred stock, in accordance with said plan of reorganization, said 10,000 shares of second preferred stock being issued in one certificate.

IX.

That said trustees did receive said stock and hold said stock as an original issue of said stock to them, and not by transfer in any wise from any persons whomsoever; that they held said stock under the terms of a trust agree- [4] ment between said trustees and said

bondholders' protective committee, which trust agreement is attached hereto, marked Exhibit "B" and hereby made a part hereof.

X.

That on or about February 25th, 1928, said plaintiff did purchase from the Government of the United States and defendant John P. McLaughlin, the Collector of Internal Revenue at San Francisco, Internal Revenue stamps in the amount of \$4,962.99; that said plaintiff, upon the issue of said 63,757 shares of first preferred stock and 63,757 shares of no par common stock to said trustees, as aforesaid, and said 10,000 shares of second preferred stock to the trustee, as aforesaid, did affix to the certificate stubs therefor said \$4,962.99 Internal Revenue stamps as follows:

To the issue of first preferred stock	\$3,187.85
To the issue of no par common stock	1,275.14
and to the issue of second preferred stock	500.00
	<hr/>
	\$4,962.99.

XI.

That said common stock without par value had at the time of said issue no actual value whatsoever and, hence, the whole issue thereof required but a one cent Internal Revenue stamp be affixed and cancelled, and hence Internal Revenue stamps in the amount of \$1,275.13 were erroneously affixed to this issue of no par common stock; that said issue of second preferred stock was merely the exchange of one kind of stock for another, without thereby increasing the capital of the

plaintiff, and was therefore not an original issue of stock and did not require any Internal Revenue stamps whatsoever to be affixed and cancelled, and hence Revenue stamps in the amount of \$500.00 were erroneously affixed to the issue of second preferred stock.

XII.

That on or about December 17th, 1928, the plaintiff, on forms made and [5] provided for such cases, duly filed with the Collector of Internal Revenue, at San Francisco, California, its claim for refund in the sum of \$1775.13, together with interest thereon, as allowed by law; that this claim for refund claimed recovery of the amount of stamps erroneously affixed to the issue of said no par common stock in the amount of \$1275.13, and the amount of \$500.00 for stamps affixed to said issue of second preferred stock.

XIII.

That the then Commissioner of Internal Revenue, Robert H. Lucas, on or about March 3rd, 1930, in his letter of that date addressed to the plaintiff, a copy of which letter is attached hereto, marked Exhibit "C" and hereby made a part hereof, did allow and find in favor of plaintiff on its claim for refund in the sum of \$1775.13 for the reason (1) that the second preferred stock issued in exchange for the outstanding shares did not involve an increase in the capital of the corporation and was not an original issue of stock within the meaning and provisions of Section 800, Schedule A-(2), of the Revenue Act of 1926, but was merely the exchange

of one kind of stock for another and, therefore, documentary stamps of the value of \$500 were erroneously affixed on this issue; and for the reason that (2) the common stock without par value had no actual value at the time of issue and, therefore, documentary stamps of the value of \$1275.13 were erroneously affixed on this issue.

XIV.

That Robert H. Lucas, as Commissioner of Internal Revenue, in said letter of March 3rd, 1930, did erroneously claim that Internal Revenue stamps to the extent of \$2,550.28 should have been affixed or paid upon an alleged transfer to the said voting trustees by the former bondholders or the bondholders' protective committee of an alleged right in them to receive the said 63,757 shares of first preferred stock and 63,757 shares of common stock without par value; that this claim of the Commissioner was unfounded and erroneous since there never existed such right in the former bondholders or the bond- [6] holders' protective committee to receive said stock, and hence there could be no transfer thereof; that the Commissioner, in said letter, did also determine, which determination the plaintiff does not contest, that Internal Revenue stamps in the amount of \$200 should have been affixed to the transfer to said Warner as trustee of the right of the stockholders of the plaintiff to receive said 10,000 shares of second preferred stock.

XV.

That on or about the 15th day of July, 1930, the plaintiff was notified of an assessment against it in the

amount of \$975.15, being the difference between the credit of \$1,775.13 for Internal Revenue stamps found by the Commissioner to have been erroneously affixed to said issue of no par common stock and second preferred stock as aforesaid, and \$2750.28, which \$2750.28 is the sum of \$2550.28, being the amount erroneously claimed by the Commissioner of Internal Revenue in said letter of March 3rd, 1930 to have been due in Internal Revenue stamps upon the transfer to the voting trustees by the former bondholders or the bondholders' protective committee of an alleged right to receive said issue of first preferred and no par common stock, as aforesaid, and \$200 being the amount claimed by the Commissioner of Internal Revenue as due upon an alleged transfer of a right of the former stock holders to receive the issue of said preferred stock, as aforesaid; that on or about July 27th, 1930, the plaintiff duly filed with the defendant Collector of Internal Revenue for the First District of California at San Francisco, on forms made and provided for such cases its claim for abatement of this assessment of \$975.15; that this claim in abatement was rejected on or about January 27th, 1931, by R. M. Estes, Deputy Commissioner of Internal Revenue, and that this assessment of \$975.15 and \$64.76 interest thereon—\$1,039.91 in all—was paid on February 11th, 1931, by the plaintiff to defendant John P. McLaughlin, the Collector of Internal Revenue at San Francisco, California. [7]

XVI.

That on or about the 24th day of February, 1932, the plaintiff, on forms made and provided for such cases,

duly filed with the defendant Collector of Internal Revenue for the First District of California, at San Francisco, California, its claim for refund in the amount of \$2,615.04, together with interest thereon as allowed by law, being said sum of \$1,039.91 and the credit of \$1,775.13 less the \$200 claimed by the Commissioner of Internal Revenue as due upon an alleged transfer of the right of the former stockholders of the plaintiff to receive the issue of second preferred stock as aforesaid, which determination the plaintiff does not contest; that this claim for refund was filed within four years of the purchase of the said Internal Revenue stamps by the plaintiff from the defendant and within four years of the payment of the aforesaid assessment against the plaintiff and that this claim for refund was upon the same grounds herein alleged; that this claim for refund was rejected and disallowed by the Commissioner of Internal Revenue, David Burnet, on or about May 3rd, 1932.

XVII.

That all of said \$2,615.04, represented by \$1,575.13 in documentary Internal Revenue stamps erroneously affixed and cancelled and the \$1,039.91 paid by the plaintiff to the defendant on or about February 11th, 1931, as aforesaid, was erroneously paid, assessed and collected, and is now unpaid, due and owing to the plaintiff from the defendant.

XVIII.

That this case arises under the laws of the United States providing for Internal Revenue, and is within the jurisdiction of this Honorable Court.

WHEREFORE, plaintiff prays for judgment against the defendant in the amount of \$2,615.04, together with interest thereon as allowed by law, and for its costs of suit herein, together with such other and further relief as may in the premises seem meet.

WILLIAM DENMAN,
Attorney for Plaintiff. [8]

State of California,
City and County of San Francisco—ss.

H. W. BUNKER, being first duly sworn, deposes and says:

That he is the President of the Coos Bay Lumber Company, a corporation, the plaintiff named in the foregoing Complaint, and as such officer is duly authorized to make this verification for and in behalf of said corporation.

That he has read the said Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

H. W. BUNKER.

Subscribed and sworn to before me, this 28th day of June, A. D. 1932.

[Seal] KATHRYN E. STONE,
Notary Public, in and for the City and County of San Francisco, State of California. [9]

EXHIBIT "A".

AGREEMENT BETWEEN BONDHOLDERS OF
PACIFIC STATES LUMBER COMPANY AND
THE BONDHOLDERS PROTECTIVE COM-
MITTEE, REPRESENTING THE HOLDERS
OF FIRST MORTGAGE EIGHT PER CENT
GOLD BONDS, DATED SEPTEMBER 18, 1925.

AGREEMENT, Dated September 18th, 1925, between such holders of the following described Bonds of the PACIFIC STATES LUMBER COMPANY (herein called the Company:)

First Mortgage Eight Per Cent Gold Bonds issued under the First Mortgage by the Company to Central Trust Company of Illinois, and the Michigan Trust Company, Trustees, dated January 1, 1922 and the unpaid and past due coupons hereinafter mentioned (herein called, collectively, the Bonds);

who shall become parties hereto by signing this agreement or depositing their Bonds hereunder, or both (herein called Depositors) parties of the first part, and G. S. Arnold, Attorney, of San Francisco, California, C. T. MacNeille, of Halsey, Stuart & Co., Chicago, Illinois, N. V. Wagner, of Second Ward Securities Co., Milwaukee, Wisconsin, Alexander V. Ostrom, Representing Wells-Dickey Co., of Minneapolis, Minnesota, and Homer W. Bunker, of Peirce, Fair & Co., San Francisco, California (herein called the Committee), parties of the second part.

Whereas, the Company has outstanding the following funded debt:

First Mortgage Bonds (interest July 1 and January 1) Seven Million Seven Hundred and Four Thousand Dollars (\$7,704,000) together with past due and unpaid coupons on the First Mortgage Bonds of the Company maturing July 1, 1924, and January 1, 1925, in the aggregate amount of five hundred seventy-three thousand and forty dollars (\$573,040); and

Whereas, the Company in common with other fir lumber manufacturers generally, has, during and since the year 1924, suffered from conditions of overproduction in the lumber industry on the west coast of the United States, and from consequent fir lumber market depression, so that during said period it did not make from revenue a sufficient sum to pay its fixed charges; and

Whereas, by reason thereof there exists a grave condition affecting the common interest of the Bondholders; and

Whereas, in view of the whole situation, and in order, if possible, to avoid receivership and foreclosure and the disturbance, expense and loss attendant thereon, it is obvious that the Bondholders should have concerted representation that can be constantly advised of all developments and able accurately to judge of the best course for all, and should unite for the protection and promotion of their common interests;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the premises, of the advantages which may accrue from the union of common interest and concert of action and of the mutual provisions and stipulations herein contained, the Deposi-

tors, each for himself and not for any of the others, do agree with each other and with the Committee, as follows:

First. The Depositors hereby make, constitute and appoint G. S. Arnold, C. T. MacNeille, N. V. Wagner, Alexander V. Ostrom, Homer W. Bunker, and their successors a Committee under this agreement with all the rights, privileges and powers herein delineated.

Each of the Depositors agrees to, and hereby does, deposit with one of the Depositaries to be hereafter named, the number of Bonds owned by him with coupons maturing January 1, 1926, or on such later date as may be designated by the Committee together with all coupons subsequently maturing in order that said Bonds may be held subject to the order of the Committee under this agreement. The Committee may in its discretion and upon such terms and conditions as it may in each instance prescribe, permit the deposit hereunder of Bonds without such coupons, or of coupons without Bonds. The term "Bonds" whenever used herein shall be deemed to include all coupons thereon maturing on and after January 1, 1926, or on such later date as may be designated by the Committee as well as coupons which have matured prior to the date hereof and are past due obligations of the Company, unless such meaning is plainly inconsistent with the context. The title to all of said Bonds is, for the period hereinafter named, vested in the Committee to hold the same for the purposes herein set forth and to have and exercise, with respect thereto, all rights and powers of every kind and description given by law or by the terms of the Bonds or in any instrument securing the same, which the Depositors might thus have had or exercised

in respect to the Bonds so deposited or the property upon which the same are secured.

For all Bonds deposited negotiable receipts in a form approved by the Committee shall be issued by the Depositary receiving the same and any bondholders so depositing the same and accepting such receipts and all transferees thereof shall be as fully bound by and be parties to this agreement as if they had signed the same. The Committee shall make suitable rules and regulations for the record both of original issue and transfer of these certificates. The registered holders of the respective certificates of deposit may be considered and treated as the absolute owners thereof and of all of the rights of the original Depositors and neither the Committee nor any member of it nor the Depositary shall be affected by any notice to the contrary.

Separate copies of this agreement may be signed by different members of the Committee or Depositors with the same effect as if all signatures had been appended to one instrument.

Second. Four-fifths of the Committee, as at any time constituted, shall have and exercise all the powers hereby conferred upon the Committee and may exercise such powers either in meeting or in writing, or by telegram without a meeting. Any member may vote or act by proxy who may, but need not, be another member, or by alternate. The Committee may limit or extend the time within which such deposits may be made hereunder, fix conditions or penalties under which such are made and, either generally or in special instances, in its discretion, accept deposits after the time has expired, or waive such conditions or penalties. Subject

to the provisions hereof, the Committee may fix its rules of action or procedure, elect such officers as the Committee may deem necessary, who may or may not be members of the Committee, select, employ and remove Depositaries, counsel, accountants, experts, agents and employees and fix the compensation of all thereof and its own reasonable compensation, if any, and generally may make or authorize such other expenditures as it shall deem necessary or appropriate for the purposes of this agreement.

It may, from time to time, add to its number, fill vacancies therein, however caused, if it deem advisable that such vacancies be filled, but four-fifths of the Committee, as at any time constituted, shall have and exercise all powers herein conferred.

No member, officer, agent, employee, or other representative of the Committee shall be disqualified to perform such function solely because he may be the holder of any security of any class, including stock, nor because of any relation he may directly or indirectly bear to the Company, its property, security or instrument securing the same.

To meet conditions not now foreseen or as they may vary, the Committee may, if its judgment so require, amend this agreement by filing the amendment with the then Depositaries, if any, and/or by giving the notice specified in paragraph Sixth. Any Depositor may, within twenty (20) days after the first publication, withdraw herefrom and, having discharged all then existing obligations under the agreement, including his pro rata part of any amount due under paragraph Fourth, be relieved from further obligation and divested of all rights hereunder. Any Depositor not so with-

drawing shall be deemed to have consented to such amendment.

Third. The Committee shall have power and authority, in its name, as owner of the deposited Bonds or otherwise, to take all such actions and steps as it shall deem advisable, for protecting, securing, supporting or subserving the true and ultimate rights of the holders of the deposited Bonds as fully as said holders themselves might do had the Bonds not been deposited or assigned; including, without intending, however, to limit, the general authority granted, among other things, the right to institute and prosecute any proceedings at law or in equity, intervene in, compromise or discontinue such proceedings and generally apply for any remedy, procedure or judicial act therein; to waive or suspend any default in the bonds or coupons deposited hereunder; either collect and receive any payments on account of the principal or interest of the deposited Bonds and distribute the same among the holders of negotiable receipts representing the same, or cause such payments to be made directly to such holders without preference or priority of one holder over another or of one receipt over another receipt; to vote at any meeting of the Bondholders under any instrument securing the same; in its own uncontrolled discretion, demand, request or require the trustee or trustees under any instrument securing any of the deposited Bonds, to take or refrain from taking any action which the Bondholders, either as individuals or in conjunction with other holders, could take; generally to exercise, or refrain from exercising, as in the Committee's discretion it conceives to be for the common interest of all the Depositors of any one class any

election, prerogative, voting or other right or function that all the holders of the deposited Bonds could have or perform under the instrument securing the same; may furnish any trustee with any security or evidence which it may require and generally do and perform all acts and requests which the Committee may deem advisable to the accomplishment of this agreement as fully as if the Committee were the absolute and unrestricted holders and owners of the deposited Bonds. The power to exercise any revocable act or function includes the right to revoke or withdraw the same.

So long as no default shall occur under the terms of the mortgage, or when a default shall have occurred under the terms of the mortgage and such default has been waived, then and in each and every such event notwithstanding anything herein contained, the Committee shall, at the request and direction of any Depositor, tender bonds represented by any receipt held by such Depositor to the Company or the Trustee or Trustees under said Mortgage, or its or their authorized agent, and shall upon the acceptance of such tender, or upon call duly made by the Company, or said Trustee or Trustees, deliver the bonds so tendered or so called to the Company or said Trustee or Trustees, or its or their authorized agent, receive the proceeds thereof and distribute to the holder or holders of the receipts representing such bonds the proceeds thereof, after deducting pro rata the expenses, expenditures and compensations provided in Section Fourth hereof.

The Committee shall have power and authority, if and when in its judgment it becomes advisable so to do, but not otherwise, to propose or adopt a plan and

agreement of reorganization providing for the appointment of Managers thereof, who may but need not be members of the Committee, and vesting in such Managers power and authority to do and perform all acts in relation to any reorganization or sale of any securities that the Committee may deem advisable or expedient to be possessed by such Managers to carry out the plan so prepared and adopted. The power to adopt or approve such plan shall include the power from time to time to amend the same in such manner upon such notice and with such right of withdrawal as may therein be provided.

Upon the adoption or approval of such plan a copy thereof shall be filed with each Depositary. Notice of the fact of approval, adoption and filing shall be published as provided in paragraph Sixth and as nearly contemporaneously as practical with the first publication a copy of the plan shall be mailed to each Depositor at the address shown on the books of the Depositaries. Any Depositor may within twenty (20) days from the date of the first publication of such notice, withdraw herefrom upon the same conditions and with like effect as is provided in paragraph Second in case of amendment. Any Depositor not so withdrawing shall be deemed to have assented to such plan.

Fourth. For all expenses, expenditures or compensations incurred by the Committee in the discharge of its duties, it shall have a lien on the deposited Bonds, proceeds or income therefrom, not, however, to exceed an amount in aggregate equal to five per cent of the face of such deposited Bonds. For the payment of such obligations, the Committee may procure advancements and, subject to the above limitation as to amount, secure their payment by like lien.

Fifth. The Depositaries to be named will be the agents of the Committee, and it shall have power to remove them, increase or decrease their numbers and make rules regulating their functions and authorities. The Depositaries and their agents shall be bound only to exercise reasonable care in the safekeeping of the deposited Bonds or other securities or property deposited with them hereunder and to deal therewith in accordance with the directions of the Committee; and the directions of the Committee shall be a complete justification for any action or omission to act of the Depositaries and their agents. The Depositaries or any or either of them may resign upon thirty days' notice in writing to the Committee or such shorter notice as the Committee may accept. The Committee may fill any vacancy arising in the office of a Depositary.

Meetings of Depositors may be called at any time by the Committee by notice mailed to them at the address shown on the books of the Depositaries, and such notice shall be deemed personal; notice as in paragraph Sixth shall also be given. The Committee shall have power to adopt rules for the regulation of such meetings and for the determination of the ownership of such certificates for the purpose of voting, including the power of voting by proxy.

This agreement shall terminate on September 18, 1928, and may be terminated at any time prior thereto or prior to the date of any extension hereof made as herein provided by the Committee in its discretion by giving the notice specified in paragraph Sixth hereof, in either of which cases the deposited bonds shall be returned to the holders of the certificates of deposit upon surrender thereof in negotiable form under such

rules of identification as the Committee may adopt and after payment of all obligations owed to or by the Committee as provided in paragraph Second hereof.

This agreement may be extended from time to time for periods not exceeding in the aggregate three years from September 18, 1928, by amendments hereof made in the manner and with the effect provided in paragraph Second hereof. At any time and for any reason, anything herein to the contrary notwithstanding, the holders of a majority or more in amount of the Bonds then deposited hereunder may withdraw herefrom in the manner and with the effect prescribed in the last paragraph of Section Second for the withdrawal herefrom in the event of an amendment of this agreement. In such event the Committee may, subject to discharge of such obligations, return all Bonds yet remaining hereunder and declare this agreement ended.

No member of the Committee shall be liable for any errors of judgment nor, in any event, for the acts or omissions of any other member of the Committee or of any agent, representative or employee of the Committee nor of any Depositary, nor for anything save his own willful misconduct.

Sixth. Hereinbefore there are several references to notices as specified in this Section Sixth. Wherever such reference is made it is intended that such notice shall be given by mailing to the Depositors at the addresses shown on the books of the Depositaries, and, after date of mailing, by publication thereof twice a week for two successive weeks in newspapers of general circulation, one each of the cities of New York, Chicago, Milwaukee, Minneapolis and San Francisco, and the date of the first publication shall be deemed the date of the notice.

Seventh. An original counterpart of this agreement shall be signed by all the members of the Committee and filed with the Secretary of the Committee. By receiving a certificate of deposit executed by or on behalf of a Depositary, any recipient or holder thereof shall thereby become and be a party to this agreement and be bound by its provisions with the same force and effect as though actually executing and delivering the same. The Committee shall, under no circumstances, be under any obligation, legal or equitable, expressed or implied, to any person whomsoever other than the holders of certificates of deposit issued hereunder.

G. S. ARNOLD,
C. T. MACNEILLE,
N. V. WAGNER,
ALEXANDER V. OSTROM,
HOMER W. BUNKER.

Depositor.

Address.

The following Depositaries have been appointed by the Committee pursuant to the foregoing Agreement:

Central Trust Company of Illinois,
125 West Monroe street, Chicago, Illinois;
Second Ward Savings Bank,
Third, West Water and Cedar streets, Milwaukee, Wisconsin;
Minneapolis Trust Company,
115 South Fifth street, Minneapolis, Minnesota;
Bank of California, N. A.,
400 California street, San Francisco, California.

EXHIBIT "B"

STOCK TRUST AGREEMENT OF COOS BAY
LUMBER COMPANY, DATED

FEBRUARY 23, 1928

THIS AGREEMENT, made this twenty-third day of February, 1928, by and between G. S. ARNOLD, C. T. MacNEILLE, N. V. WAGNER, A. McC. WASHBURN, and HOMER W. BUNKER, constituting the Pacific States Lumber Company Bondholders' Protective Committee and the Managers of the Plan of Reorganization of said company and hereinafter called the "Committee," parties of the first part, and G. S. ARNOLD, C. T. MacNEILLE, N. V. WAGNER, A. McC. WASHBURN, and HOMER W. BUNKER, hereinafter called the "Trustees," parties of the second part,
WITNESSETH:

Whereas, the Committee has caused to be delivered to said trustees, certificates representing 63,757 shares of the first preferred stock and an equal number of shares of no par value common stock of Coos Bay Lumber Company (formerly Pacific States Lumber Company) to be held by said trustees for and on behalf of the beneficial owners thereof as designated by the Committee.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The Trustees shall issue trust receipts and cause the same to be delivered to said beneficial owners, the form thereof to be substantially as follows:

“No. Units

COOS BAY LUMBER COMPANY

First Preferred and Common Stock Trust Receipt.

This Certifies that as hereinafter provided and on surrender thereof..... will be entitled (out of certificates hitherto delivered to the undersigned trustees under the agreement hereinafter mentioned) to receive certificates for shares of 7% first preferred stock with dividends cumulative from July 1, 1925 and for an equal number of shares of no par value common stock of Coos Bay Lumber Company (formerly Pacific States Lumber Company) and to receive payments equal to any dividends which may be collected by the Trustees upon such shares of stock received and held by the Trustees under said agreement.

This receipt is issued pursuant and subject to an agreement dated February 23, 1928 and executed by and between G. S. Arnold, C. T. MacNeille, N. V. Wagner, A. MacC. Washburn, and Homer W. Bunker, as the Pacific States Lumber Company Bondholders' Protective Committee, parties of the first part, and G. S. Arnold, C. T. MacNeille, N. V. Wagner, A. McC. Washburn, and Homer W. Bunker, Trustees, parties of the second part, defining all rights of the holders hereof and the duties and liabilities of the Trustees hereto subscribed, a copy of which is deposited with Central Trust Company of Illinois, Depositary, and Transfer Agent, and reference to which is hereby made for a more

particular description of the rights of the holder hereof. The stock herein described shall be deliverable to the holder hereof upon the written demand of not less than 75% in interest of the first preferred stock represented by receipts of which this receipt is one, and in any event, not later than January 1, 1932.

All first preferred and/or common stock in the hands of the Trustees may be sold as a unit but upon terms which will retire or purchase all of the first preferred stock at not less than par and accumulated dividends unless and except otherwise authorized or instructed in writing by not less than 75% in interest of the first preferred stockholders as represented by the trust receipts issued therefor.

This trust receipt is transferable on the books of the Trustees or their agents on surrender hereof by the registered holder or by attorney duly authorized; and until so transferred, the Trustees may treat the registered holder as the owner of this trust receipt for all purposes whatsoever. In the event of transfer, new trust receipt or receipts of like tenor herewith shall be issued in lieu hereof, provided that each trust receipt so issued shall be in units representing an equal number of shares of said first preferred and common stock.

This trust receipt is not valid unless signed on behalf of the Trustees by Central Trust Company

of Illinois, their duly authorized transfer agent.

G. S. ARNOLD,

C. T. MacNEILLE,

N. V. WAGNER,

A. McC. WASHBURN,

HOMER W. BUNKER,

Trustees.

By CENTRAL TRUST COMPANY
OF ILLINOIS,

Depository and Transfer Agent.

By

Assistant Secretary.

For value received I hereby sell, assign and
transfer unto
units represented by this trust receipt and do
hereby irrevocably constitute and appoint.....
.....attorney to transfer
said units on the books of the Depository and
Transfer Agent, with full power of substitution.
..... (Seal)

In Presence of:

.....
Dated”

The said trust receipts shall be transferable only on
the books of the Depository and Transfer Agent on
surrender thereof by the holder or by attorney duly
authorized and in accordance with rules from time to
time established for that purpose by the Trustees and
until so transferred, the Trustees may treat the regis-

tered holders as shown by said books as the owners of said trust receipts for all purposes whatsoever. The Trustees may cause the transfer books to be closed at any time for the holding of meetings or the payment of dividends or for any other purposes. All transfers shall be made by units and each unit shall represent one share of such first preferred stock and one share of common stock.

2. Unless otherwise terminated as hereinafter provided, this agreement shall remain in effect until but shall terminate upon January 1, 1932. This agreement may be terminated at any time by the written demand served upon the Trustees, or their authorized agent, of not less than 75 per cent in interest of the first preferred stockholders as represented by the trust receipts hereinabove described. This agreement may also be terminated by the sale of the assets of the Company or by the sale of all the common and preferred stock of the Company, or by the sale of all the common stock of the Company, and by the distribution of the proceeds thereof, as hereinafter provided. In the event of the termination of this agreement other than by such sale of the assets or of the stock of the Company, the Trustees, upon surrender of any trust receipt then outstanding, shall, in accordance with the terms thereof, and out of the stock certificates held by them, deliver stock certificates to the holders of trust receipts in the amounts provided in such trust receipts. Upon or after any such termination of this agreement the Trustees shall instruct the Depositary and Transfer Agent to deliver the said stock certificates in exchange for trust receipts when and as surrendered to said Depos-

itary and Transfer Agent for exchange, as herein provided, and all further liability of the Trustees for the delivery of stock certificates in exchange for trust receipts shall then cease and determine.

3. If the Trustees shall receive dividends in liquidation or otherwise on the shares of stock held by them under this agreement, the holder of trust receipts shall be entitled to receive pro rata distribution therefrom.

4. Any trustee may at any time resign by delivering to the other trustees, or their authorized agent, his resignation in writing to take effect ten days thereafter. In case of the death or resignation or inability to act of any trustee, the vacancy thereby occurring shall be filled by the appointment of a successor or successors to be named by the remaining trustees, provided, however, that Halsey, Stuart & Co., Second Ward Securities Company, Peirce, Fair & Company, and Wells-Dickey Company shall have the right to nominate the successor or successors to the trustee originally appointed by each of said companies respectively.

The Trustees may adopt their own rules of procedure. The action of the majority of the Trustees expressed from time to time at a meeting or by writing or telegram with or without a meeting constitutes the action of the Trustees and has the same effect as though assented to by all. Any trustee may vote or may act in person or by proxy and may be a director or an officer of the Company and vote for himself as such. The Trustees may exercise any power or per-

form any act hereunder by an agent or attorney appointed by them respectively in writing.

5. The Trustees shall have full power at any time to cause the deposited stock certificates to be transferred. As holders of said stock they assume no liability as stockholders, their interest hereunder being that of Trustees only. In voting the deposited stock, the Trustees will exercise their best judgment to secure the election of suitable directors of the Company, to the end that its business and affairs shall be properly managed and in voting and in acting on other matters upon which said Trustees have the power to vote and act hereunder, the Trustees will likewise exercise their best judgment, but they assume no responsibility in respect to such election or management or in respect to any action taken by them or taken in pursuance of their consent thereto and no trustee shall incur any responsibility as stockholder, trustee or otherwise by reason of any error of law or any matter or thing done or suffered or omitted to be done under this agreement, except for his own individual willful malfeasance.

6. All notices to be given to the holders of trust receipts shall be given by registered mail to the holders of trust receipts at the addresses furnished by such holders to the Transfer Agent. Notice to holders of trust receipts whose addresses are not known to the Transfer Agent shall be given by publication in a daily paper of general circulation in the City of Chicago twice in each week for two successive weeks and any call or notice so given shall be taken and considered as though personally served on all the holders of said trust receipts and notices so served shall be the only notice required to be given under any provision of this agreement.

7. In addition to the voting powers and other powers herein conferred upon the said Trustees, the Trustees shall have the discretionary power to sell all of the common and/or preferred stock as a unit but only upon terms which will retire or purchase all of the first preferred stock at not less than par and all accumulated dividends, unless and except otherwise authorized or instructed in writing by not less than 75 per cent in interest of the first preferred stockholders. Provided, however, that in the event of the sale of all or part of the Company's property, or of the first preferred and/or common stock of the Company, at a price sufficient to yield net proceeds in excess of the call price and accumulated dividends of said first preferred stock and said excess is greater than 75 per cent of the par value of the second preferred stock, plus interest on par at 6 per cent from January 1, 1927, then such excess shall be devoted to the purchase or retirement (whichever the Trustees may designate) of said second preferred stock at 75 per cent of par and such interest and if the said excess is not equal to 75 per cent of par and such interest as aforesaid, then each of the holders of the second preferred stock shall have the option (within twenty days of notification thereof) of receiving from such excess the proportion which the second preferred stock par value belonging to him bears to the total amount of second preferred stock par value outstanding in cancellation of or in return for his stock, as said Trustees may determine.

8. The Trustees shall have the power to employ such agents, attorneys and employees as they may deem in their discretion advisable and may fix the compensation of persons so employed and may incur such other ex-

penses as they may in their discretion determine to be necessary or advisable, and may require the Company to pay such compensation and other expenses, including liabilities heretofore incurred by the Bondholders' Protective Committee, together with reasonable compensation to the Trustees, if they so determine, for the services herein required of them and also for the services heretofore performed by the Bondholders' Protective Committee.

9. The term "Company" for the purposes of this agreement, shall be taken to mean the Coos Bay Lumber Company (formerly the Pacific States Lumber Company) a corporation organized under the laws of the State of Delaware, or any successor corporation or corporations, with or into which the same may be consolidated or merged.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

G. S. ARNOLD,
C. T. MacNEILLE,
NEWTON V. WAGNER,
A. McC. WASHBURN,
HOMER W. BUNKER,
Committee.

G. S. ARNOLD,
C. T. MacNEILLE,
NEWTON V. WAGNER,
A. McC. WASHBURN,
HOMER W. BUNKER,
Trustees. [11]

EXHIBIT "C"

TREASURY DEPARTMENT

Washington

MT-M-RHP

C1-M-11969

Mar 3-1930

Coos Bay Lumber Co.,
Balfour Bldg.,
San Francisco, California.
Gentlemen:

Your claim for the redemption of stamps in the amount of \$1,775.13, affixed in payment of tax on issues of stock, has been examined.

The issues in question consisted of 63,757 shares of first preferred stock of a par value of \$100.00 per share, and the same number of shares of common stock of no par value, and 10,000 shares of second preferred stock of a par value of \$100.00 per share. Stamps were affixed with respect to the common stock of no par value based on the actual value of \$30.00 per share.

You ask redemption of the stamps affixed in payment of the tax on the issue of 10,000 shares of second preferred stock on the ground that these shares were issued in exchange for outstanding certificates and the issue did not involve an increase in the capital of the corporation.

You also ask redemption of stamps in the amount of \$1,275.13 affixed with respect to the 63,757 shares of common stock of no par value on the ground that these shares had no actual value at the time of issue, this being evidenced by the fact that they were afterwards sold along with the first preferred stock for a price which covered only the par value of the preferred stock.

The evidence submitted shows that you are correct in your statement that the issue of the second preferred stock in exchange for outstanding shares did not involve an increase in the capital of the corporation, and that the common stock had no actual value at the time of issue. It is disclosed, however, that the 10,000 shares of second preferred stock were not issued to the stockholders but to certain trustees, and that the 63,757 shares of first preferred and 63,757 shares of common stock, which were issued through an agreement with bondholders, were not issued to such bondholders, but to trustees.

The rights of the stockholders and the bondholders to receive these shares of stock were, therefore, transferred, and such transfer is subject to tax under Schedule A-3 of the Revenue Act of 1926. The tax on the transfer of such rights amounts to \$2,750.28. Deducting from this the overpayment of \$1,775.13 on the issue tax, a stamp tax of \$975.15 is still due.

Your claim is therefore rejected, and it is requested that additional stamps in the amount of \$975.15 be affixed.

Respectfully,

ROBT. H. LUCAS

HJB

Commissioner.

[Endorsed]: Filed Jun. 28, 1932. [12]

[Title of Court and Cause.]

ANSWER.

Now comes the defendant and answers the complaint on file herein as follows:

I.

Defendant admits the allegations of paragraphs I and II of the complaint.

II.

Because of his lack of information and belief upon the allegations of paragraph III, defendant denies each and every allegation therein.

III.

Because of his lack of information and belief upon the allegations of paragraph IV, defendant denies each and every allegation therein.

IV.

Because of his lack of information and belief upon the allegations of paragraph V, defendant denies each and every allegation therein.

V.

Because of his lack of information and belief upon the allegations of paragraph VI, defendant denies each and [13] every allegation therein.

VI.

Because of his lack of information and belief upon the allegations of paragraph VII, defendant denies each and every allegation therein.

VII.

Because of his lack of information and belief upon the allegations of paragraph VIII, defendant denies each and every allegation therein.

VIII.

Defendant denies the allegations of paragraph IX.

IX.

Defendant admits the allegations of paragraphs X, XI, XII and XIII.

X.

Answering paragraph XIV, defendant admits that the Commissioner of Internal Revenue in a letter dated March 3, 1930, advised plaintiff that he had determined that stamp taxes in the amount of \$2750.28 should have been paid upon the transfer to said voting trustees by the former bondholders or bondholders' protective committee of said 63,757 shares of preferred stock and said 63,757 shares of common stock. Denies that this determination or claim of the Commissioner was unfounded or erroneous. Defendant denies the allegation that there could be no transfer of said stock. Admits that the Commissioner in said letter determined that stamps in the sum of \$200 should have been affixed to the transfer to Warner as said trustee of said 10,000 shares of second preferred trust, which determination plaintiff did not contest.

Saving as herein expressly admitted, defendant denies the allegations of paragraph XIV. [14]

XI.

Answering paragraph XV, defendant admits that on or about July 15, 1930, plaintiff was notified of an assessment of \$975.15 which was the difference between the tax determination on said transfer of rights (amounting to \$2750.28) and the overpayment of \$1775.13 paid on the issue of stock.

Defendant admits that on July 25, 1930, plaintiff filed with the defendant a claim of abatement of said assessment which was rejected on January 27, 1931. Admits that on February 13, 1931, plaintiff paid to defendant the assessment of \$975.15 and interest thereon in the sum of \$64.76.

Saving as herein expressly admitted, defendant denies each and every allegation of paragraph XV.

XII.

Defendant admits paragraph XVI.

XIII.

Defendant admits that said sum of \$1575.13 and \$1039.91 (aggregating \$2615.04) have not been repaid to plaintiff. Saving for this admission, defendant denies the allegations of paragraph XVII.

XIV.

Admits the allegations of paragraph XVIII.

WHEREFORE defendant prays that the complaint be dismissed and for his costs and for such other relief as may be just.

GEO. J. HATFIELD

United States Attorney

ESTHER B. PHILLIPS

Asst. United States Attorney [15]

United States of America,
Northern District of California,
City and County of San Francisco.—ss.

JOHN P. McLAUGHLIN, being first duly sworn, deposes and says: That he is Collector of Internal Revenue for the First District of California, and defendant in the above entitled action; that he has read the

foregoing answer to the complaint herein and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information or belief, and that as to those matters he believes it to be true.

JOHN P. McLAUGHLIN

Subscribed and sworn to before me this 3rd day of November, 1932.

[Seal]

JAMES J. SULLIVAN

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Service of the within Answer by copy admitted this 7th day of November, 1932.

WILLIAM DENMAN

Attorney for Plaintiff.

[Endorsed]: Filed Nov. 7, 1932. [16]

[Title of Court and Cause.]

WAIVER OF JURY.

IT IS HEREBY STIPULATED AND AGREED that the above entitled cause may be tried by the Court sitting without a jury.

Dated, May 10th, 1934.

WILLIAM DENMAN

Attorney for Plaintiff.

H. H. McPIKE,

U. S. Atty.

By ESTHER B. PHILLIPS,

Asst. U. S. Atty.

Attorneys for Defendant.

[Endorsed]: Filed May 10, 1934. [17]

[Title of Court and Cause.]

STIPULATION OF FACTS AND AMENDMENT
OF COMPLAINT.

IT IS HEREBY STIPULATED by and between the parties hereto that, in addition to the facts admitted by the pleadings herein, the following facts are true:

1. That the allegations of Paragraphs III, IV, together with Exhibit "A", which Exhibit "A" is incorporated by reference and made a part of this Stipulation, and also Paragraphs VI and VII of the plaintiff's complaint herein are true.

2. That it is true that said Bondholders' Protective Committee, as stated in Exhibit "A" of the complaint herein, was originally composed of G. S. Arnold, of San Francisco, California; C. T. MacNeille, of Halsey, Stuart & Co., Chicago, Illinois; N. V. Wagner, of Second Ward Securities Co., Milwaukee, Wisconsin; Alexander V. Ostrom, of Wells-Dickey Co., Minneapolis, Minnesota, and Homer W. Bunker, of Peirce, Fair & Co., San Francisco, California, and that prior to the proposed Plan of Reorganization described in Paragraph V of the complaint herein, Alexander V. Ostrom, representing Wells-Dickey Co., of Minneapolis, Minnesota, retired from said Prospective Committee and A. McC. Washburn, representing Wells-Dickey Co., of Minneapolis, Minnesota, became a member of said Committee in his place, this being the only change in the personnel of said Committee. That it is true that said Bondholders' Protective Committee selected itself and no others as managers, and at all times acted as managers, of the Plan of Reorganization described in said

complaint, under which said 63,757 shares of First Preferred Stock and 63,757 shares of No Par Value Common Stock of the Coos Bay Lumber Company, plaintiff herein, were issued. [18]

3. That it is true that pursuant to said Plan of Reorganization the following investment banking firms or houses, Halsey, Stuart & Co., Second Ward Securities Co., Wells-Dickey Co. and Peirce, Fair & Co., acting respectively through their representatives, C. T. MacNeille, N. V. Wagner, A. McC. Washburn and Homer W. Bunker, said representatives being also members of the Bondholders' Protective Committee, did name said representatives, together with said G. S. Arnold, as the Trustees to whom all of said First Preferred and No Par Value Common Stock was to be, and was issued. That since said Trustees to whom the stock was issued were so named by said persons representing said investment banking houses and not by the Bondholders' Protective Committee as such, the allegations of Paragraphs V and VIII of the complaint that the said Trustees were named by the Bondholders' Protective Committee are in error, and it is hereby stipulated and agreed that said Paragraphs V and VIII may be and hereby are deemed amended to allege that the designation of said Trustees was as hereinbefore in this Paragraph 3 set forth, and except as so amended the allegations of Paragraphs V and VIII are true.

4. Attached hereto, marked Exhibit "D" and hereby made a part hereof is the plan of reorganization described and quoted from in paragraph V of the complaint.

5. That it is true that said Trustees, to-wit, G. S. Arnold, C. T. MacNeille, N. V. Wagner, A. McC. Wash-

burn and Homer W. Bunker, held all of said First Preferred and No Par Value Common Stock under the terms of a trust agreement between said Trustees and said Bondholders' Protective Committee, which trust agreement is attached to and made a part of the complaint herein, marked Exhibit "B", and is hereby incorporated by reference and made a part of this [19] Stipulation.

Dated at San Francisco, May 9, 1934.

WILLIAM DENMAN,

Attorney for Plaintiff.

H. H. McPIKE,

U. S. Attorney.

By ESTHER B. PHILLIPS,

Asst. U. S. Attorney.

Attorneys for Defendant. [20]

EXHIBIT "D".

G. S. Arnold, Chairman,	Central Trust Company
C. T. MacNeille,	of Illinois,
N. V. Wagner,	Chicago, Illinois.
A. McC. Washburn,	Second Ward Savings Bank,
Homer W. Bunker,	Milwaukee, Wisconsin.
Committee.	Minneapolis Trust Co.,
Winston, Strawn & Shaw,	Minneapolis, Minn.
38 S. Dearborn Street,	Bank of California, N. A.,
Chicago, Illinois,	San Francisco, California.
Counsel.	Depositories.

PACIFIC STATES LUMBER COMPANY
BONDHOLDERS' PROTECTIVE COMMITTEE
Under Deposit Agreement Dated September 18, 1925
for
FIRST MORTGAGE 8% SERIAL GOLD BONDS
HARRY SMYTH, Secretary,
201 South La Salle Street,
Chicago, Illinois.
ARTHUR N. SELBY, Ass't Sec.,
432 California Street,
San Francisco, Cal.

May 4, 1927.

TO THE DEPOSITING HOLDERS OF
PACIFIC STATES LUMBER COMPANY
FIRST MORTGAGE 8% GOLD BONDS:

Your Committee has diligently endeavored to find a purchaser for the Pacific States Lumber Company on terms assuring the payment of the bonded indebtedness and other liabilities of the Company, plus some consideration acceptable to the stockholders, in order that receivership proceedings and the expense and delay incident thereto might be avoided.

However, we have not been successful in developing a purchaser whose offer we felt justified in accepting, and have terminated all negotiations for any sale.

It is the Unanimous opinion of the Committee that, having failed in the collection of principal and interest of their bonds, the bondholders are entitled to complete possession of their security.

This Committee has therefore devised a plan of reorganization which is appended hereto. The purpose of this plan is to place not only the entire control of

the Company, but also actual ownership thereof in the hands of the bondholders who assent to the plan. It has the unqualified recommendation not only of your Committee, but also of the four banking houses which distributed the bonds, namely, Halsey, Stuart & Co., Second Ward Securities Co., Wells-Dickey Co., and Peirce, Fair & Co.

It is obvious that the support of all bondholders is necessary if this Committee is to put the plan into effect without resorting to receivership and foreclosure of the [21] mortgage, and the otherwise unnecessary expenses incident thereto.

The balance sheet of the Company at March 31, 1927 as submitted to the Committee by the treasurer of the Company is attached hereto.

This plan is submitted to you for your consideration and your attention is called to the provisions of the Deposit Agreement dated September 18, 1925, governing the withdrawal of your bonds if you do not consent. SHOULD YOU APPROVE THIS PROPOSED PLAN NO ACTION ON YOUR PART IS NECESSARY. IN CASE YOU DO NOT APPROVE, THE COMMITTEE MUST BE NOTIFIED IN WRITING WITHIN TWENTY DAYS FROM THE DATE HEREOF AND YOU MAY THEN WITHDRAW YOUR BONDS UPON THE TERMS STATED IN THE DEPOSIT AGREEMENT.

BONDHOLDERS' PROTECTIVE COMMITTEE,

G. S. Arnold, Chairman,

C. T. MacNeille,

N. V. Wagner,

A. McC. Washburn,

Homer W. Bunker. [22]

PACIFIC STATES LUMBER COMPANY
PLAN AND AGREEMENT OF REORGANIZATION
ADOPTED BY THE BONDHOLDERS' PRO-
TECTIVE COMMITTEE APRIL 19, 1927.

1. Recapitalization. All the present stock of Pacific States Lumber Company shall be cancelled, and the Company recapitalized upon the following basis:

\$6,827,700 First Preferred Stock, entitled to dividends at 7%, cumulative from July 1, 1925, redeemable at 105 and accumulated dividends.

\$1,000,000 Second Preferred Stock, entitled to dividends at 6% from and after January 1, 1932, redeemable at par and accumulated dividends, if any.

68,277 shares of No Par Value Common Stock.

Common Stock only shall have voting power, but no dividends shall be paid on Common Stock until January 1, 1933 nor thereafter until all accumulated dividends on Preferred Stocks have been paid, and suitable sinking fund provision made for the retirement of Preferred Stocks in the order of their preference as the property is depleted by the liquidation of assets.

2. Stock Distribution. For each \$100 principal of the present \$6,827,700 of bonds outstanding, there shall be issued in exchange \$100 par value of First Preferred Stock and one share of Common Stock. Any of the authorized First Preferred and Common Stock not so exchanged shall be cancelled.

All of the Second Preferred Stock shall be issued to a Trustee for the former stockholders of all classes to be divided in such proportions as they shall determine.

3. Voting Trust. The First Preferred and Common Stock shall be held and voted by a committee of five Voting Trustees, for the benefit of the owners thereof,

with discretionary power to sell all of the Common and/or First Preferred Stock as a unit, but upon terms which will retire or purchase all of the First Preferred Stock at not less than par and accumulated dividends, unless and except otherwise authorized or instructed in writing by not less than 75% in interest of the First Preferred Stockholders. Also all the assets of the Company may be sold or mortgaged upon majority vote of the Common Stock.

PROVIDED, HOWEVER, that in the event of a sale of all or part of the Company's property, or of the First Preferred and/or Common Stock of the Company (while the First Preferred and Common stock is in the hands of the Trustees, as herein provided) at a price sufficient to yield net proceeds in excess of the call price and accumulated dividends on said First Preferred Stock, and such excess is greater than 75% of the par value of the Second Preferred Stock plus interest at 6% on par from January 1, 1927, then such excess shall be devoted to the purchase or retirement (whichever the trustees may designate) of said Second Preferred Stock at 75% of par and interest; and if said excess is not equal to 75% of par and interest as aforesaid, then each of the holders of the Second Preferred Stock shall have the option (within [23] twenty days of notification thereof) of receiving from such excess the proportion which the Second Preferred Stock par value belonging to him bears to the total amount of Second Preferred Stock par value outstanding in cancellation of or in return for his stock as said trustees may determine.

Each of the investment bankers (Halsey, Stuart & Co., Second Ward Securities Co., Wells-Dickey Co. and Peirce, Fair & Co.,) shall appoint one Voting Trustee

and his respective successors, and the four thus appointed shall select a fifth member as chairman.

The Trustees shall act by majority vote.

Suitable trust certificates, which shall be transferable, shall be prepared by the Trustees and delivered to the persons or parties entitled thereto, in evidence of their beneficial interest in said stock, which shall be deposited with Central Trust Company of Illinois, Chicago, Illinois, as depositary.

Unless dissolved by a sale of the assets of the Company or a sale of the Common Stock or the Common and First Preferred Stock, the Trust shall terminate and the stock shall be distributed to the owners thereof upon the written demand of no less than 75% in interest of the First Preferred stockholders, as represented by voting trust certificates, and, in any event, not later than January 1, 1932.

4. Treasury Bonds. The above investment bankers have agreed as a part of this plan to the surrender for cancellation of the \$573,040 of coupons, secured under the mortgage, and the \$583,000 of Treasury Bonds, likewise secured under the mortgage, held by or for them, leaving them with unsecured 6% serial notes, due January 1, 1928, to January 1, 1932, in connection with their advances to the Company for the protection of the bondholders; the Company to agree to cancel said securities, together with the \$54,000 remaining Treasury Bonds.

5. Time of Taking Effect. No bonds shall be actually exchanged for stock or cancelled, as hereinabove provided, unless and until all outstanding bonds are in the absolute control of the Managers.

6. Foreclosure. In the event that completion of this

plan is obstructed by the refusal of a minority of the bondholders to assent thereto, the Managers in their discretion are empowered to organize a new corporation similarly capitalized, for the purpose of putting the plan into effect and acquiring the assets of the old company on behalf of the assenting bondholders through process of foreclosure proceedings or otherwise.

7. Managers. G. S. Arnold, C. T. MacNeille, Newton V. Wagner, A. McC. Washburn and Homer W. Bunker, constituting the Bondholders' Protective Committee, are hereby appointed managers of this plan of reorganization, with full power and authority to do and perform all acts in relation thereto necessary to complete the same, including the right to amend the same in minor particulars without notice.

8. Termination. The authority of the Managers shall be coextensive as to time with that of the Bondholders' Protective Committee. [24]

PACIFIC STATES LUMBER COMPANY

And Subsidiary Companies

Condensed Consolidated Balance Sheet, March 31, 1927

ASSETS

Current Assets—

Cash	\$ 105,634.12	
Receivables (Less Reserves).....	661,075.05	
Inventories (Lower of Cost or Market).....	1,860,793.85	
	<hr/>	
Total Current Assets.....		\$ 2,627,503.02
Miscellaneous Funds		3,317.85
Investments		11,505.00
Sinking Fund on deposit with Central Trust Company of Illinois, Trustee for First Mort- gage 8% Bonds.....		766,165.36
Timber and Lands (at Book Values).....		10,481,212.96
Plants, Equipment, Railroads, Steamers, etc.—		
Cost	\$9,706,914.56	
Less: Reserve for Depreciation.....	3,977,891.50	5,729,023.06
	<hr/>	
Deferred Charges to Future Operations.....		87,381.66
		<hr/>
Total Assets		\$19,706,108.91
		<hr/>

LIABILITIES

Current Liabilities—

Secured Bank Loans.....	\$ 381,720.00	
Due for Amounts Advanced by Bankers for Protection of Bondholders—		
Coupons Purchased	\$573,040.00	
Secured Loans	375,000.00	948,040.00
Contracts and Other Notes Payable.....		136,293.75
Trade Accounts Payable, Wages and Sundry Accrued Items.....		356,258.04
Accrued Property Taxes.....		187,887.01
Total Current Liabilities.....		\$ 2,010,198.80

Contingent Liabilities—

Pending Litigation\$ 25,000.00

Deferred Liabilities, etc..... 8,596.83

First Mortgage 8% Gold Bonds.....

	Par	Premium	Total	
Due January 1, 1927....	\$ 164,700.00	\$ 4,117.50	\$ 168,817.50	
Due January 1, 1932....	1,000,000.00	50,000.00	1,050,000.00	
Due January 1, 1937....	1,500,000.00	112,500.00	1,612,500.00	
Due January 1, 1942....	4,800,000.00	480,000.00	5,280,000.00	
	\$7,464,700.00	\$646,617.50	\$8,111,317.50	
Less in Treasury.....	637,000.00	63,700.00	700,700.00	
	\$6,827,700.00	\$582,917.50	\$7,410,617.50	
Interest Accrued from July 1, 1925.....		955,878.00	8,366,495.50	
Total Liabilities			\$10,385,291.13	

Net Worth

Capital Stock Outstanding—

7% Cumulative Preferred "A".....	\$166,700.00	
8% Cumulative Preferred "B".....	150,000.00	
8% Cumulative Preferred "C".....	113,333.33	
Common	998,400.00	\$1,428,433.33

Surplus, including Capital Surplus..... 7,892,384.45 9,320,817.78

Total Liabilities and Net Worth.... \$19,706,108.91

The above Condensed Consolidated Balance Sheet of the Pacific States Lumber Company has been compiled from the books of the Company and in my opinion correctly sets forth the consolidated financial position of the Company as at March 31, 1927.

A. H. PAULSEN,
Treasurer.

(Endorsed): Filed May 10, 1934.

District Court of the United States, Northern District
of California, Southern Division.

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 22nd day of November, in the year of our Lord one thousand nine hundred and thirty-four.

PRESENT: the Honorable Frank H. Kerrigan, District Judge.

[Title of Cause.]

This case having been heretofore submitted and due consideration having been had it is ordered that Judgment be entered in favor of Plaintiff for the sum of \$2615.04, with interest at 6% per annum, thereon, as follows: on \$1575.13, from Feb. 25, 1928; on \$1039.91 from Feb. 11, 1931; together with costs of suit. Further the case having been submitted on stipulated facts, no findings of fact or conclusions of law are necessary.

[26]

In the Southern Division of the United States District
Court for the Northern District of California.

No. 19268-K

COOS BAY LUMBER COMPANY, a corporation,
Plaintiff,

vs.

JOHN P. McLAUGHLIN, as United States Collector
of Internal Revenue, First District of California,
Defendant.

JUDGMENT.

This cause having come on regularly for trial on the 10th day of May, 1934, before the Court sitting without a Jury, a trial by Jury having been waived by written stipulation filed; Lyman T. Henry, Esquire, appearing as attorney for plaintiff, and Esther B. Phillips, Assistant United States Attorney, appearing as attorney for defendant, and the trial having been proceeded with and a Stipulation of Facts having been filed, and the cause having been submitted to the Court for consideration and decision, and the Court, after due deliberation having rendered its decision and ordered that judgment be entered herein in favor of plaintiff for the sum of \$2615.04, with interest at the rate of 6% per annum, as follows: on \$1575.13, from Feb. 25, 1928, until paid, on \$1039.91, from Feb. 11, 1931, until paid,

and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Coos Bay Lumber Company, a corporation, plaintiff, do have and recover of and from John P. McLaughlin, as United States Collector of Internal Revenue,

First District of California, Defendant, the sum of \$2615.04, with interest at the rate of 6% per annum, as follows: on \$1575.13, from Feb. 25, 1928, until paid, on \$1039.91, from Feb. 11, 1931, until paid, together with its costs herein expended taxed at \$10.00.

Judgment entered this 22nd day of November, 1934.

WALTER B. MALING,

Clerk. [27]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 10th day of May, 1934, the above-entitled case came regularly on for trial before the Court, sitting without a jury, trial by jury having been expressly waived. The plaintiff appeared by its Attorneys, WILLIAM DENMAN and LYMAN HENRY, and the defendant appeared by his Attorneys, H. H. McPIKE, United States Attorney, and ESTHER B. PHILLIPS, Assistant United States Attorney, and the following proceedings were had:

The plaintiff offered in evidence a Stipulation of Facts, signed and agreed to by both parties, which was regularly on file in the records of the case. Said Stipulation of Facts is hereby incorporated into this Bill of Exceptions by reference and made a part of it. Thereupon the plaintiff rested. The defendant rested. Plaintiff moved for judgment in its favor and moved the Court to conclude from the stipulated facts that as a matter of law the newly created trustees referred to in said Stipulation of Facts were the only persons who ever had a right to receive the stock in question; that there never was a transfer to them by the bondholders or any other person or body of a right to receive said

stock, and that the transaction did not constitute a taxable transaction. The [28] defendant moved for judgment in his favor, and further moved the Court to conclude from the stipulated facts that as a matter of law the bondholders referred to in said Stipulation of Facts had a right to receive the stock issued in consideration for their bonds and transferred to the newly created trustees such right, and that said transaction constituted a taxable transaction. The Court took the motions of Plaintiff and Defendant under submission. Thereafter briefs were submitted.

The Court, having considered the evidence and the arguments of counsel, on the 22nd day of November, 1934, granted the Plaintiff's motions, to which the defendant duly excepted, and defendant hereby assigns said exception as Defendant's Exception No. 1. The Court, on said 22nd day of November, 1934, denied defendant's motions. The defendant excepted and hereby assigns said exception as Defendant's Exception No. 2. The Court thereupon ordered judgment to be entered in favor of plaintiff. Said order appears elsewhere in the record and by reference is made a part of this Bill of Exceptions.

WHEREFORE defendant, within the time required by law and the rules of court, presents this Bill of Exceptions, and prays that the same be settled, allowed and approved by the Court.

H. H. McPIKE,

United States Attorney.

By ESTHER B. PHILLIPS,
Asst. United States Attorney,
Attorneys for Defendant. [29]

[Title of Court and Cause.]

STIPULATION RE BILL OF EXCEPTIONS.

It is hereby STIPULATED and AGREED by and between the attorneys for plaintiff and for the defendant that the foregoing Bill of Exceptions has been presented within the term of Court, as required by law and the rules of this Court, and that it is proper for said Bill of Exceptions to be approved, allowed and settled as correct in all respects.

WILLIAM DENMAN,
LYMAN HENRY,

Attorney for Plaintiff.

H. H. McPIKE,

United States Attorney.

ESTHER B. PHILLIPS,
Asst. United States Attorney.
Attorneys for Defendant.

ORDER SETTLING BILL OF EXCEPTIONS.

The foregoing Bill of Exceptions contains all of the evidence offered upon said cause. It is hereby approved and settled as correct in all respects.

A. F. ST. SURE,
United States District Judge. [30]

[Title of Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS.

The above-entitled cause came on for hearing on the application of the defendant to settle the Bill of Exceptions in this case, and it appearing to the Court that said Bill of Exceptions contains all of the material facts

occurring upon the trial of the cause, and all the evidence adduced at the same, and that the parties hereto have stipulated and agreed upon said Bill;

And it FURTHER APPEARING that said cause was heard and judgment therein rendered by the Honorable Frank H. Kerrigan, United States District Judge for the Northern District of California, and that by reason of the death of the said Honorable Frank H. Kerrigan, on or about the 9th day of February, 1935, said Bill of Exceptions cannot be allowed by the Judge before whom said cause was tried;

And it FURTHER APPEARING from the records of said cause, and from the stipulation of counsel for both parties, a true bill of exceptions can be allowed and fairly passed upon.

NOW, THEREFORE, it is hereby ORDERED that the foregoing Bill of Exceptions be and the same is hereby settled as a true Bill of Exceptions in said cause, and that it contains all of the material facts, matters, things and exceptions occurring upon the trial of said cause, and the same is hereby certified accordingly by the undersigned Judge of this Court in the place and stead of the Honorable Frank H. Kerrigan.

Dated: February 15, 1935.

A. F. ST. SURE,
United States District Court.

[Endorsed]: Filed Feb. 15, 1935. [31]

[Title of Court and Cause.]

PETITION FOR APPEAL AND ORDER
ALLOWING APPEAL.

To the Honorable Judges of the United States District
Court for the Northern District of California:

The defendant herein, feeling aggrieved by the judgment entered in this cause, on or about November 22, 1934, against him, does hereby appeal from such judgment to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the Assignment of Errors filed herewith, and prays that this appeal be allowed; that citation be issued, as provided by law; that a transcript of the record, proceedings and documents, upon which said judgment was based, duly authenticated, be sent to said Circuit Court of Appeals for the Ninth Circuit, under the rules of said court, and that no bond or other security be required of defendant Collector of Internal Revenue upon said appeal.

H. H. McPIKE,

United States Attorney.

By ESTHER B. PHILLIPS,

Assistant United States Attorney.

Attorneys for Defendant.

ORDERED that the appeal be allowed and that [32] defendant shall not be required to give any bond or other security upon said appeal.

Dated: February 20, 1935.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Service of the within Petition by copy admitted this 20th day of Feb. 1935.

LYMAN HENRY,
Attorney for Plf.

[Endorsed]: Filed Feb. 20, 1935. [33]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the defendant, JOHN P. McLAUGHLIN, as Collector of Internal Revenue for the First Collection District of California, and files the following assignment of errors, upon which he will rely in his petition for review of the judgment heretofore entered in this cause by the United States District Court for the Northern District of California:

I.

The Court erred in entering its decision and judgment in favor of plaintiff and against defendant in the sum of \$2,615.04, with interest thereon.

II.

The Court erred in granting plaintiff's motion for judgment in its favor.

III.

The Court erred in its conclusions from stipulated facts that as a matter of law, the newly created trustees referred to in the Stipulation of Facts were the only

persons who ever had a right to receive the stock in question; that there never was a transfer to them by the bondholders, or any other person or body of a right to receive said stock and that [34] the transaction did not constitute a taxable transaction.

IV.

The Court erred in denying the defendant's motion for judgment in his favor.

V.

The Court erred in refusing to conclude from the stipulated facts that as a matter of law the bondholders referred to in said stipulation had a right to receive the stock issued in consideration for their bonds and transferred to the newly created trustees such right and that said transaction constituted a taxable transaction.

H. H. McPIKE,

United States Attorney,

ESTHER B. PHILLIPS,

Assistant United States Attorney.

(Attorneys for Defendant)

[Endorsed]: Service of the within Assignment by copy admitted this 20th day of Feb. 1935.

LYMAN HENRY,

Attorney for Plf.

[Endorsed]: Filed Feb. 20, 1935. [35]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To plaintiff above-named and to Messrs. William Denman and Lyman Henry, Attorneys for Plaintiff:

Please take notice that the defendant herein hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered in this case on or about November 22, 1934.

H. H. McPIKE,

United States Attorney.

By ESTHER B. PHILLIPS,

Assistant United States Attorney.

(Attorneys for Defendant)

[Endorsed]: Service of the within Notice by copy admitted this 20th day of Feb. 1935.

LYMAN HENRY,

Attorney for Plf.

[Endorsed]: Filed Feb. 20, 1935. [36]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the above-entitled Court:

Please prepare and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit a transcript of the record in the above-entitled cause for the use of said Court, including therein the following:

- (1) The judgment roll.
- (2) Stipulation of Facts.

(3) Minute Order of Judgment, and Opinion of Court, if any.

(4) Bill of Exceptions.

(5) Assignment of Errors.

(6) Petition and Order Allowing Appeal.

(7) Notice of Appeal.

(8) Citation on Appeal.

(9) This Praecipe.

H. H. McPIKE,

United States Attorney.

By ESTHER B. PHILLIPS,

Assistant United States Attorney.

(Attorneys for Defendant)

[Endorsed]: Service of the within Praecipe by copy admitted this 20th day of Feb. 1935.

LYMAN HENRY,

Attorney for Plf.

[Endorsed]: Filed Feb. 20, 1935. [37]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 37 pages, numbered from 1 to 37 inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said Court, and that the

same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$13.95; that said amount has been charged against the United States and the original Citation issued in said suit is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 9th day of April, 1935.

[Seal]

WALTER B. MALING, Clerk.

By J. P. Welsh,

Deputy Clerk. [38]

United States of America, ss:

THE PRESIDENT OF THE UNITED STATES
OF AMERICA

To COOS BAY LUMBER COMPANY, a corporation,
GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California wherein JOHN P. McLAUGHLIN is appellant, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Northern District of California this 20th day of February, A. D. 1935.

A. F. ST. SURE,
United States District Judge.

Service of the within Citation by copy admitted this 20th day of Feb. 1935.

LYMAN HENRY,
Attorney for Plf.

[Endorsed]: Filed Feb. 20, 1935. Walter B. Maling, Clerk. B. E. O'Hara, Deputy Clerk. [39]

[Endorsed]: No. 7832. United States Circuit Court of Appeals for the Ninth Circuit. John P. McLaughlin, as United States Collector of Internal Revenue, First District of California, Appellant, vs. Coos Bay Lumber Company, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 10, 1935.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

